

REMARKS

Claims 1-41 and 43 under consideration. Reconsideration is requested.

ITEM 4: REJECTION OF CLAIM 26 UNDER 35 U.S.C. §102(e) AS BEING ANTICIPATED BY DELANEY ET AL. (U.S.P. 6,999,565)

Claim 26 is rejected under 35 U.S.C. 102(e) as being anticipated by Delaney. The rejection is traversed.

As provided in MPEP §706.02 entitled Rejection on Prior Art, anticipation requires that the reference must teach every aspect of a claimed invention. Delaney does not support an anticipatory-type rejection by not describing features recited in the claim 26.

Claim 26 recites a voice mail message including "an audio stationary body occurring at least once in said message area in combination with the voice message."

Applicant submits that Delaney does not teach such an audio body occurring in a message area in combination with the voice message.

The Examiner contends that this feature is taught by Delaney citing col. 8, lines 4-14. However, Delaney merely teaches (see, for example, col. 8, lines 10-14):

when the recipient answers the telephone, the header portion of the message may tell him that he is about to receive a message from the customer, and the trailer portion may facilitate response.

Summary

Since features recited by claim 26 are not taught by Delaney, the rejection should be withdrawn and claim 26 allowed.

ITEMS 8 AND 11-12: REJECTION OF CLAIMS 1-9, 11-25, 27-33, AND 34-38 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER GOLD ET AL. (U.S. Pat. Pub. 2002/0032752) IN VIEW OF COMBINATIONS OF KAWASHIMA (U.S.P 6,549,767), DELANEY, AND GERSZBER (U.S. Pat. Pub.2001/0050977)

In items 8 and 11-12 of the Office Action, independent claims 1 and 27 (and respective dependent claims 2-9, 11-25, 28-33, and 34-38) are rejected under 35 U.S.C. §103(a) as being unpatentable over Gold in view of combinations of Kawashima, Delaney, and Gerszber. The Examiner contends it would have been obvious:

to modify the method of Gold by adding the sound samples to the background and looping the sound sample as taught by Kawashima so that the background sounds can last for the duration of the message.

The rejection is traversed. As provided in MPEP §2143.03 "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art."

Independent claim 1 recites a method of adding background sound to a voice mail message including "looping the selected sound sample as background sound upon determining a time duration of the selected sound sample is less than a time duration of the selected sound sample."

Independent claim 27 recites an apparatus including "a processor . . . , wherein upon the selected sound sample being selected as background sound and upon determining a time duration of the selected sound sample is less than the a time duration of the selected sound sample, the selected sound sample is looped.

Applicant submits that the cited art, alone or in combination, does not teach a "looping the selected sound sample as background sound upon determining a time duration of the selected sound sample is less than a time duration of the selected sound sample (emphasis added)."

Rather, Kawashima teaches (col. 4, lines 37-43):

it is possible to transfer message data in various modes, such as a mode in which compressed and encoded data or musical data are looped by a predetermined number of times.

(emphasis added).

That is, since Kawashima teaches a message and music are looped together, (and further the looping is a predetermined number of times), even an *arguendo* combination of the cited art does not teach a looping of a sound sample as background sound that is based "upon determining" a time duration of the selected sound sample is less than a time duration of the selected sound sample.

Summary

Since features recited by independent claims 1 and 27 (and respective dependent claims 2-9, 11-25, 28-33, and 34-38) are not taught by the cited art, alone or in combination, and *prima facie* obviousness is not established, the rejection should be withdrawn and claims 1-9, 11-25, 27-33, and 34-38 allowed.

ITEM 8, PAGES 9-11: REJECTION OF CLAIMS 39 AND 41 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER GOLD IN VIEW OF KAWASHIMA

In item 8 pages 9-11 of the Office Action, claims 39 and 41 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gold in view of Kawashima. The Examiner contends that it is obvious to modify Gold with Kawashima

by adding the sound samples to the background and looping the selected sound sample as taught by Kawashima so that the background sounds can last for the duration of the message.

The rejection is traversed.

Claim 39 recites a voice mail platform including "means for combining a selected sound sample with a recorded voice message to form a combination message; and means for looping the selected sound sample upon the selected sound sample being a background sound (emphasis added)." Claim 41 recites a method of "adding background sound to a greeting including "combining the selected sound sample with a recorded greeting to form a combination greeting; and looping the background sound (emphasis added)."

That is, according to an aspect of the present invention, the sound sample is looped and added as background sound.

However, Kawashima teaches col. 4, lines 37-43:

it is possible to transfer message data in various modes, such as a mode in which compressed and encoded data or musical data are looped by a predetermined number of times,

(emphasis added).

That is, an *arguendo* combination of Gold and Kawashima teaches that message and music are looped together, not that the background sound is added and the background sound separately looped.

Summary

Since *prima facie* obviousness is not established the rejection should be withdrawn and claims 39 and 41 allowed.

ITEM 9: REJECTION OF CLAIM 10 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER GOLD IN VIEW OF KAWASHIWA AND OGINO ET AL. JP PAT. PUB. 7212475

Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over Gold in view of Kawashima and Ogino. The rejection is traversed.

Dependent claim 10 recites a method "wherein the looping the selected sound sample is for a time duration equal to a time duration of the recorded voice message."

The Examiner contends it would have been obvious:

to modify the method of Gold by looping the selected sound sample as taught by Ogino so that the music can be played during the entire voice message.

Applicant submits that Ogino does not teach such "a looping the selected sound sample is for a time duration equal to a time duration of the recorded voice message," as the Examiner contends.

Rather, Ogino merely teaches a system that(see, for example paragraph [0017]:

makes in agreement the playback start point of both the sound sources of the announcement voice of the searched sound-source box, and background music, and carries out playback initiation.

That is, merely starting the sound and voice together.

Summary

Since *prima facie* obviousness is not established, the rejection should be withdrawn and claim 10 allowed.

ITEM 10: REJECTION OF CLAIMS 40 AND 43 UNDER 35 U.S.C. §103(a) AS BEING UNPATENTABLE OVER GOLD IN VIEW OF OGINO

Claims 40 and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gold in view of Ogino. The rejection is traversed.

Claim 40 recites a method of providing ambient sound to a recorded voice message including "adding the voice message to the selected sound sample to form a combination message, wherein the sound sample is looped for a duration equaling a duration of the voice message."

Claim 43 recites a method of combining sound with a recorded voice message including "combining the voice message with the selected sound sample to form a combination message, the selected sound sample being looped for a duration corresponding to a duration of the voice message."

Recited Features Not Taught

Applicant submits that Ogino does not teach a method including any such "looping for a duration corresponding to a duration of the voice message." Rather, Ogino merely teaches (see, for example paragraph [0017]) a system:

makes in agreement the playback start point of both the sound sources of the announcement voice of the searched sound-source box, and background music, and carries out playback initiation.

That is, merely starting the sound and voice together.

Examiner's Statement Not Supported

The Examiner states "Ogino further teaches of synchronizing the backgrounds sound (thus looping) to match the length of the voice message."

The Applicant respectfully traverses the Examiner's statement that "synchronizing the backgrounds sound equates with "looping," and demands the Examiner produce authority for the statement. The Applicant specifically points out the following errors in the Examiner's action.

Applicant submits that the noticed fact is not considered to be common knowledge or well-known in the art, and there is no evidence supporting the Examiner's assertion. See

M.P.E.P. § 2144.03(b) ("there must be some form of evidence in the record to support an assertion of common knowledge").

In addition, it appears that the Examiner also bases the rejection, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant. Thus, Applicant calls upon the Examiner to support such assertion with an affidavit.

Summary

Since *prima facie* obviousness is not established the rejection should be withdrawn and claims 39 and 41 allowed.

CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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